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16 **UNITED STATES DISTRICT COURT**
17 **NORTHERN DISTRICT OF CALIFORNIA**
18 **OAKLAND DIVISION**

19 EPIC GAMES, INC.,
20 *Plaintiff, Counter-defendant,*
21 *v.*
22 APPLE INC.,
23 *Defendant, Counterclaimant.*
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Case No. 4:20-CV-05640-YGR-TSH

**EPIC GAMES, INC.'S
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL SUPPORTING
EXHIBITS TO J. WESLEY
EARNHARDT'S DECLARATION IN
SUPPORT OF OPPOSITION TO
APPLE INC.'S MOTION FOR AN
ADVERSE CREDIBILITY FINDING**

The Honorable Yvonne Gonzalez Rogers

1 Plaintiff Epic Games, Inc. (“Epic”) brings this administrative motion under Civil
 2 Local Rules 7-11(a) and 79-5(d)-(e) for an order granting Epic leave to file under seal Supporting
 3 Exhibits H and I, and portions of Supporting Exhibit B, to the Declaration of J. Wesley Earnhardt
 4 in Support of Plaintiff Epic Games, Inc.’s Opposition to Defendant Apple Inc.’s Motion for an
 5 Adverse Credibility Finding. (*See* ECF No. 602.)

6
 7 Civil Local Rule 79-5 provides that documents, or portions thereof, may be sealed
 8 if a party “establishes that the documents, or portions thereof, are privileged, protectable as a trade
 9 secret, or otherwise entitled to protection under the law.” Civ. L. R. 79-5(b). Under this standard,
 10 a party seeking to seal a document generally must overcome the “strong presumption in favor of
 11 access” that applies to court documents other than those that are traditionally kept secret.
 12 *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (citations omitted).
 13 However, the “public has less of a need for access to court records attached only to non-
 14 dispositive motions because those documents are often ‘unrelated, or only tangentially related to
 15 the underlying cause of action.’” *Id.* at 1179 (citations omitted). Instead, a “‘good cause’ showing
 16 under Rule 26(c) [of the Federal Rules of Civil Procedure] will suffice to keep sealed records
 17 attached to non-dispositive motions.” *Id.* at 1180; *In re NCAA Student-Athlete Name & Likeness*
 18 *Licensing Litig.*, 2013 WL 3014144, at *1 (N.D. Cal. June 17, 2013). A party seeking to seal such
 19 material must make a “particularized showing of good cause with respect to any individual
 20 document.” *San Jose Mercury News, Inc. v. U.S. Dist. Court, N. Dist. (San Jose)*, 187 F.3d 1096,
 21 1103 (9th Cir. 1999). Sealing requests must also be “narrowly tailor[ed].” Civ. L.R. 79-5(b).

22
 23 Subsection (e) of Local Rule 79-5 sets forth procedures that apply when a party
 24 seeks to file information designated as confidential by an opposing party or a non-party. This
 25 Administrative Motion is based on Non-Party Microsoft Corporation (“Microsoft”)’s designation
 26 of information in Supporting Exhibits B, H, and I as “HIGHLY CONFIDENTIAL –
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ATTORNEYS' EYES ONLY" under the protective order entered in the above-captioned case. (ECF No. 112.) Accordingly, Epic is filing Supporting Exhibits H and I, and portions of Supporting Exhibit B, under seal. With respect to Exhibit B, Epic is filing under seal only those portions of the excerpted deposition transcript for which Microsoft has not agreed to remove its "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" designation. Pursuant to subsection (e)(1) of Local Rule 79-5, Microsoft has four days to file a declaration establishing that all of the designated material is "sealable", as defined in Local Rule 79-5(b).

Dated: May 12, 2021

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Respectfully submitted,

By: /s/ J. Wesley Earnhardt
J. Wesley Earnhardt

Attorneys for Plaintiff Epic Games, Inc.